

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BMW OF NORTH AMERICA, LLC and)
 BAYERISCHE MOTOREN WERKE, AG,)
)
 Plaintiffs,)
 vs.)
)
 QUALITY STAR BENZZ LLC,)
)
 Defendant.)

Case No.: 2:12-cv-00889-GMN-VCF

ORDER

Pending before the Court is the Motion for Order to Show Cause (ECF No. 29) filed by Plaintiffs BMW of North America, LLC (“BMW NA”) and Bayerische Motoren Werke AG (“BMW AG”) (collectively “Plaintiffs”). Defendant Quality Star Benzz LLC (“Defendant”) did not file a response. For the reasons discussed below, the Court GRANTS Plaintiffs’ Motion for Order to Show Cause.

This case arose out of a trademark dispute and alleged acts of trademark infringement. On March 29, 2013, this Court entered default judgment against Defendant and granted a Permanent Injunction enjoining Defendant, its agents, servants, employees, attorneys, and all others in active concert or participation from: (a) using Plaintiffs’ Roundel logo, any colorable imitations thereof, and any other similar name, trademark or designation affiliated with Plaintiffs or its affiliates including, but not limited to, use on banners, signs, websites, advertisements, marketing materials, stationery, and business cards; and (b) committing any act that is likely to confuse, mislead, or deceive others into believing that Defendant, or its products and services, are associated with, sponsored by, or approved by Plaintiffs. (Order 10:18–11:3, 13:12–15, ECF No. 15).

On May 14, 2015, Plaintiffs filed the instant Motion, alleging that “Defendant has

1 violated the Permanent Injunction by continuing to display and feature BMW's Roundel logo
2 on signage of its competing automotive business." (Motion OSC 2:1-2, ECF No. 29).
3 Additionally, Plaintiffs request the Court to order Defendant to show cause why the Court
4 should not: (1) find Defendant in civil contempt of the 2013 Judgment and Permanent
5 Injunction; (2) order Defendant, its agents, servants, employees, attorneys, and all others in
6 active concert or participation to immediately remove BMW's Roundel logo and colorable
7 imitations thereof from its building, signs, and trucks, and otherwise comply fully with this
8 Court's 2013 Judgment and Permanent Injunction; and (3) order Defendant to reimburse
9 BMW's reasonable attorneys' fees incurred in pursuing this motion, such attorneys' fees to be
10 determined following submission of the amount of such fees to this Court. (*Id.* 6:14-23).

11 A court may issue civil contempt sanctions for the purpose of coercing a party to comply
12 with a court order, to compensate the party seeking sanctions for losses incurred, or both.
13 *Whittaker Corp. v. Execuair Corp.*, 953 F.2d 510, 516 (9th Cir 1992). In order for sanctions to
14 issue, it must be established that the non-moving party knowingly violated a definite and
15 specific order of the court requiring it to perform or refrain from a particular act or acts. *In re*
16 *Bennett*, 298 F.3d 1059, 1069 (9th Cir. 2002); *General Signal Corp. v. Donallco, Inc.*, 787 F.2d
17 1376, 1379 (9th Cir. 1986). The party moving for sanctions must provide "clear and
18 convincing evidence" of the violation, *United States v. Ayres*, 166 F.3d 991, 994 (9th Cir.
19 1998), although the failure to comply with the court order need not be intentional. *Donallco,*
20 *Inc.*, 787 F.2d at 1379. Furthermore the violation cannot be based on a good faith and
21 reasonable interpretation of the court's order. *Wolfard Glassblowing Co. v. Willy Vanbragt;*
22 *Mary Vanbragt, individually, and d/b/a Zodiac Expressions*, 118 F.3d 1320, 1322 (9th Cir.
23 1997) (citing *In re Dual—Deck*, 10 F.3d at 695).

24 Defendant has failed to file any points or authorities in opposition to Plaintiffs' Motion
25 for Order to Show Cause as allowed by LR 7-2(d). LR 7-2(d) provides that "failure of an

opposing party to file points and authorities in response to any motion shall constitute a consent to the granting of the motion.” LR 7–2(d).

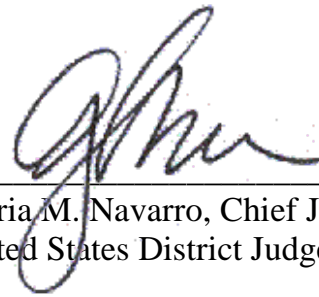
Accordingly,

IT IS HEREBY ORDERED that Plaintiffs’ Motion for Order to Show Cause (ECF No. 29) is **GRANTED**.

IT IS FURTHER ORDERED that Plaintiff shall **SERVE a copy of this Order** upon Defendant’s resident agent, Rahib Hamdam, at 4411 N. Rancho Drive, Las Vegas NV 89130.

IT IS FURTHER ORDERED that a show cause hearing is set for **Tuesday, August 25, 2015 at 9:00 a.m., in Courtroom 7D** before the Honorable Gloria M. Navarro, Chief Judge, United States District Court. At this hearing, Defendant is ordered to show cause as to why it should not be held in contempt and sanctioned for its failure to comply with this Court’s Permanent Injunction Order (ECF No. 15). **Failure to appear at this hearing will result in a finding that Defendant is in contempt of court.**

DATED this 10th day of August, 2015.

A handwritten signature in black ink, appearing to read 'G. Navarro', is written over a horizontal line.

Gloria M. Navarro, Chief Judge
United States District Judge